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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re ALICIA J., a Person Coming Under the
Juvenile Court Law.

B243398
(Los Angeles County
Super. Ct. No. CK73523)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Appellant,

v.

SABRINA M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Sheri Sobel,
Referee. Reversed.

Deborah Dentler, under appointment by the Court of Appeal, for Defendant and
Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and
Tracey F. Dodds, Principal Deputy County Counsel, for Plaintiff and Appellant.

A mother contends that the juvenile court erred in refusing to permit her to cross-examine her daughter who testified about mother's substance abuse. Plaintiff and appellant Los Angeles County Department of Children and Family Services (DCFS) concedes that the juvenile court erred, but argues the error was harmless. We disagree and reverse.

DCFS appeals from the juvenile court's finding that a child was described by Welfare and Institutions Code section 300, subdivision (j),¹ based on sustained allegations of a petition involving her siblings, but was not also described by section 300, subdivision (b). We conclude this issue is moot.

BACKGROUND

Appellant and respondent Sabrina M. (mother) is the mother of four children: Teresa P. (born July 1996), Elijah C. (born May 2000), Rianna M. (born June 2008), and Alicia J. (born February 1, 2012). Only Alicia is a subject of this appeal. Alicia's father, Henry J. (father), is not a party here. The facts are drawn from this appellate record and the record in an earlier appeal by mother in *Los Angeles Dept. of Children and Family Services v. S.M.* (June, 21, 2012, B239272) [dismissed as abandoned], as to which we have granted mother's motion requesting the Court to take judicial notice.

The siblings' dependency history

The family's history in dependency proceedings dates back to 1999, when a section 300 petition was filed in Fresno alleging that Teresa was at risk of injury because of mother's history of substance abuse. Teresa was returned to mother for a few months in 2001, but she and Elijah were removed from mother and placed in foster care in December 2001, due to mother's substance abuse. Mother reunited with Teresa and Elijah in 2004.

In 2008, another petition was sustained alleging mother had a nine-year history of substance abuse, including cocaine, and was a current user of methamphetamine, which rendered her incapable of providing regular care for the children. Mother completed a drug

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

program, reunited with her children in 2010 and the case was closed. Mother relapsed in 2010 after Eric M., Rianna's father and mother's drug supplier, was released from jail.

In October 2011, DCFS filed an amended section 300 petition (the siblings' petition) alleging that Teresa, Elijah and Rianna required juvenile court protection. A contested jurisdictional hearing on the siblings' petition was conducted by Referee Truong on December 19, 2011. Father, who was not named in the siblings' petition, did not attend and was not represented at the hearing. Mother was on bed rest during the latter part of her pregnancy with Alicia, and was not able to attend the hearing.²

Teresa testified at the December 2011 jurisdictional hearing about sexual experiences and drug use in which she claimed to have engaged with father and mother. She testified that she and father had engaged in sexual intercourse on multiple occasions when she was 14 years old. Teresa claimed mother had known about and participated in those incidents, and gave her the illegal drug "Ecstasy" in advance of some of them.

Mother's counsel argued Teresa was not credible. Referee Truong disagreed and sustained the siblings' petition, as amended, under subdivisions (b) and (d).³ Referee Truong

² Mother declined the court's invitation to attend the hearing telephonically; her counsel waived her appearance.

³ As sustained, the siblings' petition alleged:

(b)(2) "On a prior occasion, the children Teresa . . . , Elijah . . . and Rianna[]'s mother[]'s, male companion, [father] . . . physically abused the child Teresa by striking the child's thigh with a belt. [Father] grabbed and choked the child and threw the child on a bed. The children's mother knew of the physical abuse of the child by [father] and failed to protect the child. Such physical abuse of the child by [father] and the mother's failure to protect the child, endangers the child's physical health and safety and places the child and the child's siblings, Elijah and Rianna, at risk of harm."

(b)(5), (d)(1) "On or about December 2010, and prior occasions . . . [father] . . . sexually abused [Teresa]. Such sexual abuse consisted of, but was not limited to, engaging in sexual intercourse with [Teresa] while the child was under the influence of Ecstasy given by the mother. The child's mother asked the child Teresa to touch her inappropriately during the sexual abuse episode. Further, . . . mother, knew of the sexual abuse of the child by [father] and failed to take action to protect the child. Such sexual

did not sustain allegations in the siblings' petition that related to mother's history of substance abuse, or that alleged mother was a current marijuana user.⁴ Teresa, Elijah and Rianna were declared dependents and ordered into placement on January 31, 2012.

Alicia's petition

Alicia was born the day after her siblings were declared juvenile court dependents. A new petition (Alicia's petition) was filed on February 8, 2012. As relevant here, that petition alleged that: "(b)(1) (j)(1) . . . mother . . . , has an eleven year history of illicit drug use, including cocaine and methamphetamine, and is a current user of marijuana, which renders the mother incapable of providing regular care and supervision of the child. . . . On 2/2/12, the mother had a positive toxicology screen for marijuana at the child's birth. The father . . . knew of the mother's illicit drug use and failed to protect the child. The child's siblings . . . are prior dependents of the Juvenile Court due to the mother's illicit drug use. The mother has a criminal history of two convictions of Possession of Marijuana, a conviction of Possession Of Controlled Substance and a conviction of Possession Of Controlled Substance Paraphernalia. The mother's illicit drug use, and the father's failure to protect the child, endangers the child's physical health and safety and places the child at risk of physical harm, damage and failure to protect."⁵

abuse of the child Teresa . . . and failure to protect on the part of the child's mother endangers the child's physical and emotional health, and places the child and the child's siblings, Elijah and Rianna at risk of harm."

⁴ With respect to the allegations that mother's historical and current drug use rendered her incapable of properly caring for the children and endangered their health and safety, Referee Truong concluded "there's an indication from Teresa, but [the court didn't] have a nexus that would kick it over . . . to be able to find preponderance in [the siblings'] case." As for the allegations that mother had caused Teresa to consume six Ecstasy pills ((b)(3)), and had allowed father to possess and use illicit drugs in the home in the children's presence ((b)(4)), Referee Truong was "not quite sure why [DCFS] filed those two allegations."

⁵ Alicia's petition also alleged physical and sexual abuse by father of Teresa, and that mother was aware of such abuse and failed to protect Teresa's siblings. Those allegations are not at issue here.

The entire case, involving Alicia and the allegations in the siblings' petition, was transferred to Referee Sobel.

In its detention report DCFS produced a lab report stating that mother's February 2, 2012 toxicology test was "presumptively" positive for marijuana.⁶ Mother disputed that result, claiming she had not ingested marijuana since July 2011. Father told DCFS mother's physician had said it was acceptable for her to eat marijuana brownies to treat morning sickness early in her pregnancy. Alicia's toxicology report at birth was negative.

In its jurisdiction/disposition report, DCFS informed the court that mother was convicted of possession of a controlled substance in 2007 and had four prostitution convictions, most recently in July 2011. With regard to the allegations in Alicia's petition that father had physically abused Teresa, mother said Teresa had hit mother and tried to choke her. Father intervened and tried to push Teresa onto the bed; Teresa tried to hit him and then ran away with a neighbor. Mother denied that father ever hit Teresa with a belt, or that he had grabbed, choked or physically disciplined the child.

Father also denied striking Teresa. He said Teresa had been "jumping on" mother because Teresa was always running away and mother tried to discipline her. Mother tried to talk to Teresa, but Teresa started swinging at mother and brought her fists up. Father tried to break up the fight by grabbing Teresa and shoving her on the bed. He never choked her and she was not physically injured. That was the last time father saw Teresa, who ran away.⁷ Father vacated the family's home in November or December 2011 and ended his relationship with mother.

⁶ The record does not indicate whether mother's presumptively positive lab result, which was "sent for confirmation," was ever confirmed.

⁷ Father was interviewed in October 2011 about this incident of physical abuse. At that time, he told DCFS he had spanked Teresa and that was why she ran away. Father said Teresa had come home "all zoned out" and jumped on him, and he spanked her with his hand and accidentally poked her in the eye. Teresa was in a rage and father held her down. Thirty minutes later, she was out the door. When asked if he had used a belt during that incident, father said "probably, maybe."

DCFS interviewed Teresa in October 2011 about the alleged incident of physical abuse. Teresa said she went to her room one evening in April 2011 to lie down; her siblings followed her. Father came in and hit Elijah on the leg with a belt. Teresa pushed father who hit her hard on the leg, leaving a bruise. Father then grabbed her by the throat and threw her on the bed. Mother came into the room and was angry. She told Teresa to get something for Rianna and, when Teresa refused, told Teresa to leave, which she did.

Mother denied any substance abuse. She had used marijuana during her pregnancy for morning sickness, but did not understand how the drug test taken at the hospital was positive as she had not had marijuana since July 2011. Mother also said she had not used cocaine since 1996, and had last used methamphetamine in 2007 or 2010.

In 2011, Teresa told DCFS that mother used marijuana daily, and she had seen her with methamphetamine several times. Teresa said she once used cocaine with mother, and often smoked marijuana with her.

Mother denied the allegation that father sexually abused Teresa while she was under the influence of drugs mother had given her. She said Teresa was angry because mother was “done” with Eric, that Teresa had behavioral problems and was sexually active. Mother claimed to have letters from Eric in which he admitted sleeping with Teresa. Eric had bought Teresa a cell phone and laptop, and the two of them talked for hours. Teresa had told Angela, a friend, that she had been involved in a sexual relationship with Eric since she was 11 years old, and was in love with him.

Father also said Teresa confessed to being involved in a sexual relationship with Eric since she was 11. She was also caught sending nude photos of herself to men on the Internet, and snuck men into the house several times. Father said that in 2011 Teresa was getting Ecstasy pills at school. As for the allegation that he touched Teresa, father had told DCFS, “I don’t know what to say about that, but I do know she is a fast little girl” who e-mailed nude pictures of herself to adults and gave oral sex at school.

In October 2011, Teresa told DCFS father had sexually abused her. She claimed the first incident occurred after mother and Teresa took Ecstasy together and went out to celebrate mother’s birthday. Teresa did not remember much about that night. She told

DCFS that mother gave her pills so she could come into the room so father could touch her and engage in sexual intercourse with her. Teresa had last had sex with father sometime between December and April 2011. Mother was always present when father had sexual intercourse with her, and sometimes “join[ed] in.”

Angela told DCFS that Teresa had confided in her about having been sexually abused by Eric. That relationship had progressed to a point where it felt natural to Teresa who seemed to believe the conduct was normal. Teresa never told Angela she had been sexually abused by father.

In mid-March 2012, DCFS submitted a last-minute information indicating that mother and Father were enrolled in a parenting education class, and that mother was having trouble finding individual counseling. There was also a letter from a maternal aunt stating her belief that Teresa was untruthful. Results of a February 4, 2012 drug test were positive for opiates, codeine and morphine. Mother explained she had been prescribed painkillers after her cesarean delivery of Alicia three days earlier. DCFS tried to but was unable to reach mother’s doctor to confirm mother’s explanation. Mother had a negative drug test on February 24, 2012. The parents had attended seven classes at Parents Anonymous.

A contested jurisdictional hearing began on May 3, 2012. The court observed at the outset that Alicia’s case boiled down to “a [section 300, subdivision] (j) count; that this child is at risk based on the [previous sustained] allegations as to the other children” plus a new count alleging that mother tested positive for marijuana at Alicia’s birth.

The court permitted father to produce evidence and to testify to rebut allegations that he sexually and physically abused Teresa prior to Alicia’s birth. It reasoned that, because father had not been party to the action involving the siblings’ petition, he had not yet had a chance to contest the allegations against him and due process required that he be permitted to do so. But the court refused to permit mother to contest the sustained allegations of the

siblings' petition, which it deemed res judicata as to her.⁸ Mother was not permitted to cross-examine Teresa regarding the new allegations of mother's drug use before Alicia's birth. The matter was continued to May 22, 2012, at which time DCFS told the court each parent had now participated in 13 parenting classes, introduced its documentary evidence and rested.

Father called then-14-year-old Teresa as a witness. She testified that Father hit her with a belt sometime in April 2011 after she refused to participate in "family time." She had gone into her room, followed by her siblings, and was lying down. Mother told father to get the belt and he came into the room, hitting Elijah with the belt on his way in. Then father hit Teresa, who stood up and began arguing. Father grabbed Teresa by the throat and threw her on the bed while mother, Elijah and Rianna watched.

Teresa claimed to have seen mother use "weed" and Ecstasy. She said mother used Ecstasy sometime between January and April 2011, and Teresa had last seen her use

⁸ The following colloquy took place:

"[Mother's counsel]: I'm not even allowed to ask her questions regarding mother's drug use, alleged drug use?"

"Court: Subsequent to the petition that was sustained if there is new information that you believe is important for this court to make a decision, I'm fine with that. But . . . there is nothing that you can ask that is not subsequent to the petition that was sustained by Referee Truong on 12/19/2011.

"[Mother's counsel]: Mother would argue that she should be entitled to ask questions regarding the (j) counts because the girl's testimony has actually presented new evidence. And because of . . . this evidence, the collateral estoppel res judicata does not apply.

"Court: I don't agree. The only thing that's filed here basically is a (j). [DCFS] filed a whole bunch of stuff but legally speaking it is all going except for the (j).

"Mother's counsel: So I'm not allowed to question her inconsistent statements, her—

"Court: No, you're not. [Mother] had counsel.

"Mother's counsel: That would be over my objection."

marijuana in the home just before Teresa was kicked out in April 2012. She knew mother used methamphetamines because she had found her pipe in the bathroom.

Teresa confided to Angela that she was involved in a sexual relationship with Rianna's father. The relationship ended when Eric was incarcerated.

Teresa testified that one incident of sexual abuse by father took place in December 2010. Teresa, mother and father went to a party in Hollywood to celebrate mother's birthday. Teresa had taken Ecstasy before the party, in the car on the way to the party, and at the party. Afterwards, the three of them stayed in hotels for days. The first night, mother and father slept in one bed and Teresa slept in the other bed. In the morning, father came to Teresa's bed and began touching her breasts and vagina. After touching Teresa for a minute or two, father took off her underwear and they engaged in sexual intercourse while mother lay awake in the other bed.

Teresa claimed the first incident of father's sexual abuse occurred in November 2010. She had been asleep in her bed when mother woke her up and told her to move to mother and father's bed. Mother then lay down with Rianna, and Teresa fell asleep in the bed with father. She woke up when father began touching her breasts, stomach and vagina. After a few minutes, father removed Teresa's pants, had sex with her and went to sleep.

On another occasion in the middle of December, father came into Teresa's room late one night and gave her some Ecstasy. Mother was present and knew Teresa took Ecstasy. The three of them went into the living room where mother and father had intercourse on the floor while Teresa watched. Teresa joined them there and father had sex with Teresa while mother sat beside her.

A fourth incident occurred in mother and father's bedroom. Mother and Teresa were listening to music, having taken Ecstasy together. They joined father in bed. Father and mother began to have sexual intercourse, then father began to have intercourse with Teresa who pushed him away and left the room.

Teresa never confronted mother or father about what happened. Mother had told her she needed to be nice, and that Teresa was the only reason father stayed.

DCFS submitted evidence indicating that mother had three negative drug tests between February 24 and March 16, 2012, missed two tests during the first half of April 2012 (because the lab refused to accept her urine samples due to the temperature of the samples), had a negative test on April 19, and then missed one test and a make-up test in early May 2012. She tested positive for methamphetamines and Cannabis in mid-May and again in early June 2012.

Mother testified that she started dating father after Eric's incarceration. After father moved in the house rules became more strict: curfews were imposed and homework had to be finished before the television was turned on. Teresa, who had liked father at first, reacted by running away and doing things on her computer that she was not supposed to do. Father never punished Teresa. Mother asserted her Fifth Amendment right not to testify when asked if she had ever done Ecstasy.

Father testified that, in April 2011, he tried to break up a fight between mother and Teresa by separating them. In the course of doing so he put Teresa down on the bed. She then jumped up in his face, fighting, and he "inadvertently poked her in the eye trying to get control of her," after which she left. Father denied choking Teresa or hitting her with a belt. Father never saw drugs in the home. When father moved in he established new rules and hoped to abolish "all kind[s] of negativity." On Mother's birthday in December 2010, he and mother went out with father's potential business partner. Teresa did not accompany them.

Angela testified that Teresa said she had been having sex with Eric since she was 11 years old. Angela specifically asked Teresa if father had sexually abused her; Teresa said, "no." Angela was close to Teresa, who had never said anything bad about father.

At the conclusion of the hearing, Referee Sobel found that, after having read and considered the documentary evidence and listening to the testimony, she did not find Teresa credible. The juvenile court found that Alicia was described under section 300, subdivision (j). The court (mistakenly) stated that the allegation mirrored the original sustained finding

in the siblings' petition that mother had a history of substance abuse.⁹ The court struck the allegations regarding father, found him to be a nonoffending, noncustodial parent and placed Alicia in his care. Mother was given reunification services and ordered to complete a drug program, parenting education, and to participate in sex abuse and individual counseling.

Mother and DCFS each filed a notice of appeal.

DISCUSSION

Mother's appeal: The juvenile court erred in refusing to permit mother to cross-examine Teresa about allegations of mother's substance abuse

The trial court denied mother's request to cross-examine Teresa with respect to her statements regarding mother's drug use or inconsistent statements made while testifying in father's case-in-chief. The court reasoned that mother was collaterally estopped from cross-examining Teresa because Referee Truong had sustained equivalent allegations as to mother's drug use in the siblings' petition.¹⁰ The trial court was mistaken. The disputed issue here, as to whether mother was a current user of marijuana at or before Alicia's birth, was not determined by Referee Truong in adjudicating the siblings' petition.

Alicia had not yet been born when the siblings' petition was filed or sustained. That petition did not allege that mother used marijuana during her pregnancy with Alicia. Referee Truong struck allegations in the siblings' petition that mother had a history of substance abuse and that she was a "current abuser of marijuana." The true jurisdictional findings as to

⁹ All allegations regarding mother's history of substance abuse had been stricken from the siblings' petition.

¹⁰ The court stated: "Referee Truong found over a year ago that the facts as alleged by [DCFS] in its erroneously pled (b), (d), et cetera, for Alicia, are res judicata, and basically mother submitted or was heard by trial. Whatever happened, what was found to be the facts in this case were that mother has a history of substance abuse, including cocaine and methamphetamine, is a current abuser of marijuana. The children are prior dependents of the juvenile court due to mother's substance abuse. . . . [¶] . . . [¶] . . . Then there was a trial and Referee Truong found that this was all true, based on the facts that she had before her at the time." These statements were inaccurate. Referee Truong made no finding as to res judicata and struck an allegation in the siblings' petition that mother was a "current abuser of marijuana."

the siblings' petition were limited to allegations that father sexually and physically abused Teresa with mother's knowledge, that mother failed to protect her children from this abuse, and that she gave Ecstasy to Teresa. Referee Truong made no true findings as to the consumption (or abuse) of illicit drugs by mother herself.

Mother maintains that the juvenile court's order sustaining the section 300, subdivision (j) allegation was erroneous because none of the allegations in the siblings' petition related to her history of substance abuse—the predicate support for the court's section 300, subdivision (j) true finding here—were sustained. Thus, the juvenile court's refusal to permit her to cross-examine Teresa regarding mother's drug use was a denial of due process. DCFS appropriately concedes the merits of this argument, but maintains that the court's refusal to allow mother to cross-examine Teresa was harmless error. DCFS is incorrect.

“As in other civil cases, parties to a dependency proceeding have a statutory due process right to cross-examine and confront witnesses.” (*In re Amy M.* (1991) 232 Cal.App.3d 849, 864; *In re Malinda S.* (1990) 51 Cal.3d 368, 383, fn. 16; Cal. Rules of Court, rule 5.682(b)(3) & (b)(4).) When credibility is at stake during a dependency hearing, “parents are entitled to . . . confront and cross-examine the witnesses against them.” (*In re Vanessa M.* (2006) 138 Cal.App.4th 1121, 1130.) When a parent has been deprived of a due process right, ““[t]he standard of review . . . is whether the error was harmless beyond a reasonable doubt.”” (*In re S.H.* (2011) 197 Cal.App.4th 1542, 1556.)

Due process in dependency hearings is not synonymous with full-fledged cross-examination rights. (*Maricela C. v. Superior Court* (1998) 66 Cal.App.4th 1138, 1147 [“The due process right to present evidence is limited to relevant evidence of significant probative value to the issue before the court”].) Here, however, there can be no serious question as to the relevance and significance of the cross-examination mother wished to conduct: Teresa provided statements to DCFS and testimony supporting the allegation in the petitions that mother was a current drug user. Without Teresa's statements or testimony there was nothing in the record to support that charge: father said he never saw mother use drugs, mother denied having used any drugs during her pregnancy (apart from

marijuana brownies for nausea), neither of Alicia's other siblings said they had seen mother use drugs while she was pregnant, and Alicia was born without drugs in her system. Under these circumstances, it was error to refuse to allow mother to cross-examine Teresa. "[T]he question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm." [Citation.]” (*In re S. O.* (2002) 103 Cal.App.4th 453, 461.) “[P]ast conduct [is] probative of current conditions’ if there is reason to believe . . . the conduct . . . continue[s].” (*Ibid.*) Mother had a right to cross-examine Teresa on matters concerning the risk of harm to Alicia from alleged maternal drug use. Mother also had a right to question Teresa about statements Teresa made under oath in father's case-in-chief which were not consistent with hearsay statements attributed to Teresa in reports and evidence elicited by father. This was “new evidence”; i.e., evidence that Teresa was not credible which contradicted Referee Truong's conclusion that Teresa was credible.

Because the trial court mistakenly believed true findings about mother's substance use had been made in the siblings' case, and thus deemed mother to be collaterally estopped from “re-litigating” the issue of her drug use, mother was deprived of her due process right to confront and cross-examine the principal witness against her, whose testimony (and whose hearsay statements in DCFS's reports) was admitted and considered by the court.

Seeking to convince us the court's refusal to allow mother to cross-examine Teresa regarding mother's drug use was harmless, DCFS argues there is overwhelming evidence of mother's substance abuse, independent of Teresa's testimony. The agency points to Referee Truong's adjudication of the siblings' petition finding true an allegation that mother gave Ecstasy to Teresa, mother's long history of drug use and relapses, her positive toxicology test after Alicia's birth, and her positive and missed drug tests during spring and summer 2012.

None of these points advances DCFS's cause. First, Referee Truong's finding that mother provided Ecstasy to Teresa, while troubling, does not constitute evidence that mother herself ever used the drug. Second, evidence regarding mother's historical substance abuse did not address the pivotal issue of whether she was still using drugs while pregnant with Alicia. Third, mother's “positive toxicology test” after Alicia's birth, was only

“presumptively positive,” a presumption DCFS never confirmed. Both mother and father vehemently denied mother used drugs during her pregnancy, apart from marijuana brownies consumed early on to quell morning sickness. Finally, evidence of mother’s missed or positive drug tests *several months after* Alicia’s birth and detention do not constitute evidence to support the contention that Alicia was at risk because mother used drugs in the months *leading up to or at the time of the child’s birth*. Teresa—whom the trial court found not credible on any point—was the sole eyewitness and family member who claimed to have seen mother use illicit drugs. Elijah said nothing about drug use. Father said he never saw illicit drugs in the home and never saw mother under the influence. The social worker, who prepared DCFS’s reports and testified at the jurisdictional hearing, said nothing about drugs or mother’s drug use, and did not know the results of mother’s most recent drug test. Although DCFS’s reports contain statements by Teresa in which she described having seen mother use illicit drugs, mother was not permitted to challenge those statements on cross-examination to elicit other evidence or to undermine Teresa’s credibility.

Importantly, Alicia was not born with marijuana or other drugs in her system, and mother denied using drugs during her pregnancy. Teresa’s hearsay statements in DCFS’s reports, and drug test results filed in DCFS’s “last-minute” reports, both of which were some evidence mother was a drug user, were facts disputed by mother and father’s testimony. And, though mother tested positive at the hospital for codeine and morphine, she explained that she had been prescribed pain medication due to Alicia’s caesarean delivery, a claim DCFS tried (but was unable) to verify with mother’s doctor. Thus, the evidence at the hearing as to whether mother had exposed Alicia to a serious current risk of harm by using illicit drugs during her pregnancy, was clearly controverted.

Mistakenly relying on findings never made by Referee Truong and relying on Teresa as DCFS’s “main witness,” the juvenile court sustained an allegation that mother had “an 11-year history of illicit drug use” and was a recent user of illicit drugs that placed Alicia at current risk. The court’s true findings should not have been made without allowing mother to cross-examine her chief accuser as to what Teresa actually knew about mother’s drug use during the pertinent period. Teresa’s claim that mother used drugs while pregnant with

Alicia may have been shown on cross-examination to be as unworthy of belief as the court deemed the rest of her testimony to be.

Mother was deprived of the opportunity to cross-examine the primary witness against her on the question of her drug use during her pregnancy with Alicia. Such a profound denial of due process cannot be deemed harmless error. Mother is entitled to a new hearing and an opportunity to fully cross-examine Teresa.¹¹

DISPOSITION

The jurisdictional findings and dispositional orders are reversed. The matter is remanded to the juvenile court with instructions to conduct new jurisdictional and dispositional hearings. Department of Children and Family Services's cross-appeal is dismissed as moot.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

MALLANO, P. J.

CHANEY, J.

¹¹ The basis for DCFS's cross-appeal as to the juvenile court's refusal to assert jurisdiction under section 300, subdivision (b) has been rendered moot by our conclusion as to mother's appeal.